IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WP No. 16288 of 2006

Between :

M/s. Sri Sai Constructions .. Petitioner

And

The Commissioner of Commercial Taxes, Government of Andhra Pradesh, Hyderabad and two others .. Respondents

Dated : 11th September, 2006

ORAL ORDER : (per JC,J)

Writ Petition is filed with the prayer as follows :

"For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue an appropriate writ order or direction more particularly one in the nature of writ of mandamus

(a) declaring the action of the 3rd respondent in passing the assessment orders in respect of the petitioner firm for the years 1999-2000 and 2000-2001 in Assessment Order No. 12795/1999-2000 (APGST) dated 31.3.2003 and Assessment No. 12795/2000-2001

dated 5.3.2003 respectively to best of his judgment without giving the petitioner reasonable opportunity to produce the Books of accounts in support of their claim for total exemption of sales tax so levied in the above assessment orders as illegal, arbitrary, void abnitio and against principles of natural justice;

(b) consequently direct the respondents to pass fresh assessment orders for the year 1999-2000 and 2000-2001 in respect of the petitioner firm by re-opening the same by giving reasonable opportunity to the petitioner firm for producing the books of accounts relating to assessment year 1999-2000 and 2000-2001 in support of their claim for exemption on the entire turn over for the assessment year 1999-2000 and 2000-2001.

(c) And to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner is a partnership firm carrying on the business of executing civil contracts. For the assessment year 1999-2000, the petitioner admittedly executed civil works for the Government of Andhra Pradesh to the tune of Rs.1,50,82,548/-. According to the petitioner, the entire turnover is exempt from tax which is leviable under Section 5F of the APGST Act on various grounds. The 3rd respondent issued a show-cause notice dated 5.3.2003 calling upon the petitioner to produce the books of accounts. The petitioner did not produce the books of

accounts. Therefore, the 3rd respondent by his order dated 31.3.2003 determined the tax liability of the petitioner at Rs.6,96,154/-. Similarly, for the year 2000-2001 also, the tax liability of the petitioner was determined at Rs.53,25,148/- after giving allowance to the tax already deducted at source. It appears from the affidavit filed in support of the writ petition that the petitioner carried an appeal to the Appellate Deputy Commissioner, Vijayawada against the assessment order pertaining to the year 1999-2000. The 2nd respondent by his notice dated 23.4.2003 informed the petitioner that appeal filed by the petitioner would be taken up only on deposit of the statutory amounts required under Section 19(1) and the appeal would be rejected if the amount is not paid within the stipulated time. The petitioner did not make the deposit and hence the appeal is rejected.

As a consequence of rejection of the appeal, the 3rd respondent herein proceeded to recover the taxes due from the petitioner by initiating proceedings under Revenue Recovery Act. Hence, the present writ petition.

The only submission made by the learned counsel for the petitioner is that though under Section 5F of the APGST Act, dealers who are engaged in the business of executing works contracts are liable to pay tax at the specified rate on the value of the goods utilized

in execution of such works contract, however, under the first proviso to the said section, if the goods so utilized happen to be `Declared Goods' the dealer is liable to pay only 4% on the value of the `Declared Goods' if the goods had already not suffered tax earlier and if the goods had already suffered tax before utilization by the dealer, they are exempt from taxation under Section 5F subject to further condition that the goods are transferred from the contract to contractee in the same form in which they were purchased by the contractor. The 1st proviso to Section 5F reads as follows :

> "Provided that tax shall be paid at the rate of four paise on every rupee of his turnover pertaining to declared goods, if the goods have not suffered tax earlier, and no tax shall be payable on the turnover pertaining to declared goods, if such goods have suffered tax earlier under this Act and are transferred from the contractor to the contractee in the same form in which they were purchased by the contractor:"

It is the submission of the learned counsel for the petitioner that he did in fact utilized some `declared goods' in executing the works contract. The question whether the petitioner in fact utilized `declared goods' and if so, whether such goods suffered tax at some point of time or not are all questions of fact, which

can be determined only on production of appropriate evidence. Admittedly, the petitioner did not either produced the books of accounts or any other material in support of the claim.

In the circumstances, we do not see any merits in the writ petition and the same is accordingly dismissed at the admission stage.

(J.CHELAMESWAR, J)

(M.VENKATESWARA REDDY,J)

11th September, 2006.

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